

CAUSE NO. 12-09-21616

Francisco Echevarria

IN THE DISTRICT COURT OF

Plaintiff

v.

WALLER COUNTY, TEXAS

Jose L. Pulido, Manuel Acosta, Manuel
Acosta d/b/a Acosta Trucking a/k/a
Acosta Transport

Defendants

155TH JUDICIAL DISTRICT

Plaintiff's First Amended Petition

Francisco Echevarria (hereinafter "Plaintiff") complains of Jose L. Pulido, Manuel Acosta, Manuel Acosta d/b/a Acosta Trucking a/k/a Acosta Transport (collectively "Defendants") and would show the Court the following:

I.

Nature of Action

1. Plaintiff suffered injury as a result of a collision with Defendants' tractor-truck which was operated by defendants.

II.

Discovery Level

2. Discovery in this matter may be conducted under Level 2 of the Texas Rules of Civil Procedure.

III.

Jurisdiction and Venue

3. The claims asserted arise under the common law of Texas.

EXHIBIT A

4. Venue is proper because Plaintiff resides in Waller County.

IV.

Parties

5. Plaintiff is a resident of Brookshire Texas.

6. Defendant Jose L. Pulido is a resident of California and may be served through personal delivery at 239 S. Dallas Ave., San Bernardino, California 92410.

7. Defendant Manuel Acosta is a resident of California and may be served through personal delivery at 3005 Michelle Drive, Colton, California 92324.

8. Defendant Manuel Acosta d/b/a Acosta Trucking a/k/a Acosta Transport which does substantial business within Texas and may be served personally through Manuel Acosta at 3005 Michelle Drive, Colton, California 92324.

V.

Facts

8. On or about May 18, 2012, the Plaintiff was traveling in Austin County near FM 3013 and Oil Field Road. Defendants attempted to make a U-Turn under dangerous foggy conditions causing a collision. The collision did substantial damage to the Plaintiff's vehicle; also causing significant injuries to his head, neck, back, and other parts of his body. As a result, the Plaintiff is currently undergoing extensive medical treatment.

VI.

Causes of Action

Negligence Against All Defendants

9. Plaintiffs repeat and reallege each allegation contained above.

10. Plaintiffs sustained injuries because of Defendant's negligence and gross negligence when Defendant:

- Failed to control the tractor-truck's speed;
- Failed to operate the tractor-truck safely;
- Failed to keep a proper lookout;
- Failed to properly train their driver;
- Failed to change lanes safely;
- Performed illegal U-Turn;
- Failed to maintain a safe distance; and
- Other acts so deemed negligent.

11. As a result of Defendants' negligence, the Plaintiff suffered severe physical injury. Plaintiff is entitled to recover for his injury. Defendants' actions were done with a reckless disregard to a substantial risk of severe bodily injury. As such, Plaintiff is entitled to exemplary damages.

VII.

Causes of Action Against Manuel Acosta d/b/a Acosta Trucking a/k/a Acosta Transport

Negligent Hiring

12. Plaintiff repeats and realleges each allegation contained above.
13. Plaintiff sustained injuries as a result of Defendant's negligent hiring because of Defendant's:
- Failure to conduct a reasonable and adequate interview of Mr. Pulido as a potential employee.
 - Failure to properly follow up on information not provided by Mr.

Pulido in the interview process.

- Failure to conduct a proper employment and background check.
- Failure to sufficiently investigate Mr. Pulido's training, prior employment, criminal record, and past.
- Failure to perform the required screening, testing, and physical of Mr. Pulido.
- Failure to adopt proper policies and procedures regarding the interview of a potential employee who will be driving a tractor/trailer on the highways of the State of Texas.
- Such other and further acts of negligence as may be shown in the trial of this cause as discovery progresses.

Negligent Training

14. Plaintiff repeats and realleges each allegation contained above.
15. Plaintiff sustained injuries as a result of Defendant's negligent training because of Defendant's:

- Failure to explain and demonstrate its safety policies and procedures to Mr. Pulido.
- Failure to provide the necessary training to Mr. Pulido regarding driving this vehicle, vehicle safety, safety classes, how to properly and safely drive the vehicle, the proper method to maintain a vehicle, the proper way and the necessity of keeping the vehicle clean and in proper working order, and in all matters regarding the proper and safe operation of a vehicle and the maintenance of vehicle in various situations.
- Failure to properly train its drivers regarding all aspects of driver safety.
- Failure to train its employees, including Mr. Pulido, regarding safe and proper operation of a vehicle such as a person and/or company of ordinary care would have done in the same or similar circumstances.
- Failure to provide and/or require regular follow-up driver education and

training.

- Such other and further acts of negligence as may be shown in the trial of this cause as discovery progresses.

Negligent Supervision, Retention, and Monitoring

16. Plaintiff repeats and realleges each allegation contained above.
17. Plaintiff sustained injuries as a result of Defendant's negligent supervision, retention and monitoring because of Defendant's:

- Failure to monitor Mr. Pulido to make sure that he was complying with policies and procedures.
- Failure to interview and test Mr. Pulido to make sure he had read, and was familiar with, understood, and followed the company policies and procedures.
- Failure to implement proper policies and procedures for its employees, including Mr. Pulido, regarding driver safety and vehicle safety.
- Failure to document and make a determination regarding fault in the accident made the basis of this suit.
- Failure to supervise Mr. Pulido to insure that he was keeping the vehicle properly maintained.
- Such other and further acts of negligence as may be shown in the trial of this cause as discovery progresses.

Negligent Entrustment

18. Plaintiff repeats and realleges each allegation contained above.
19. Plaintiff sustained injuries as a result of Defendant's negligent entrustment because Defendant:

- Provided a vehicle to Jose Pulido who was not properly trained and did not have the proper education, background, training, or experience to safely operate the vehicle, and who was an incompetent and/or reckless driver.

VIII.

Prayer

As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff prays for relief and judgment, as follows not to exceed \$5,000,000.00:

- Compensatory damages against Defendant;
- Actual damages;
- Consequential damages;
- Pain and suffering;
- Exemplary damages
- Past and future mental anguish;
- Interest on damages (pre- and post-judgment) in accordance with law;
- Plaintiffs' reasonable attorneys' fees;
- Costs of court;
- Expert witness fees;
- Costs of copies of depositions; and
- Such other and further relief as the Court may deem just and proper.

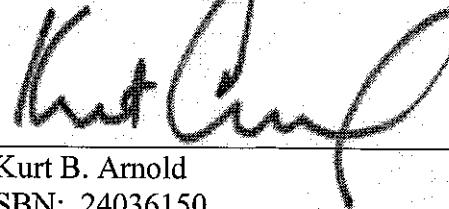
IX.

Jury Trial Demanded

Plaintiff hereby demands a trial by jury.

Respectfully Submitted,

ARNOLD & ITKIN LLP



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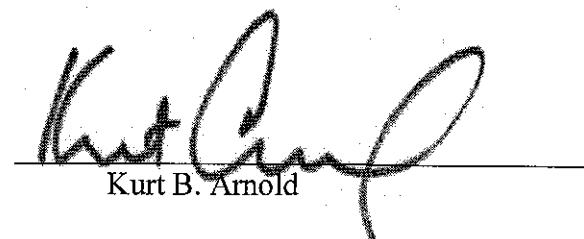
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent to all counsel of record on this 20th day of February, 2013:

Eric R. Benton
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*Counsel for Defendants, Jose L. Pulido, Manuel Acosta, Manuel Acosta d/b/a
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Kurt B. Arnold